

## APPEAL NO. 010337

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 24, 2001.

The issues reported from the benefit review conference were:

1. Did the Claimant [appellant] sustain a compensable injury, in the form of an occupational disease; and
2. Did the Claimant have disability resulting from the injury sustained, and if so, for what period(s)?

With regard to those issues, the hearing officer determined that the claimant had not sustained a compensable injury in the form of an occupational disease and that the claimant did not have disability.

The claimant appealed, asserting, as he had at the CCH, that a ladder he was on had shifted and he "had to jump off a ladder that was about to fall, when [he] landed this caused [his] right knee to buckle." The claimant asserts that some of the respondent's (carrier) contentions are untrue. The carrier responds, urging affirmance.

## DECISION

Affirmed.

The claimant was an "insulator" whose job was to wrap air conditioning ducts and work on "chill water" pipes. Apparently, until the CCH, the claimant was asserting a repetitive trauma injury, "by working on [his] knees" and going up and down a ladder 80% of the time. The claimant had also sustained a compensable 1996 left ankle injury working for the same employer. Whether or not the claimant came back to work limping after his left ankle injury is disputed. The hearing officer accurately sums up the claimant's testimony by commenting that "[a]ccording to Claimant his right knee became sore from doing this repetitive work and on \_\_\_\_\_, while coming down a ladder, the ladder shifted and he jumped off and his right knee buckled." The claimant finished his shift on August 23; worked August 24, 2000; and then reported an injury to the employer. The employer testified that the claimant said that his right knee hurt because he was favoring his left ankle. What the claimant told the employer at various times is vigorously disputed.

The claimant sought treatment at the (clinic) and in a report dated September 6, 2000, the history recites favoring the left ankle causing the claimant to put weight on the right lower extremity. There is no mention of a ladder shift. The claimant was diagnosed with a right knee strain. In other reports dated October 13 and December 19, 2000, no mention is made of a ladder shift and the doctors opine that the right knee problems are

due to favoring the "left lower limb" due to the ankle injury or a repetitive use injury. The carrier asserts that the 62-year-old claimant has a degenerative joint condition and that the specific ladder shifting incident was first brought forward at the CCH.

The evidence is in conflict and deals in large part with the credibility of the witnesses and the medical reports. The hearing officer also had the benefit of viewing a pair of the claimant's work jeans, which are not in evidence. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

In that we are affirming the hearing officer's decision that the claimant did not have a compensable injury, the claimant cannot by definition have disability.

The decision and order of the hearing officer are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Susan M. Kelley  
Appeals Judge